



# Civil Resolution Tribunal

Date Issued: January 30, 2023

File: ST-2022-001465

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 1091 v. English, 2023 BCCRT 82*

**B E T W E E N :**

The Owners, Strata Plan LMS 1091

**APPLICANT**

**A N D :**

KAREN ENGLISH also known as KAREN HOARE and  
GEORGE BRIAN ENGLISH

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

David Jiang

## **INTRODUCTION**

1. This dispute is about accessing a strata lot. The respondents, Karen English also known as Karen Hoare and George Brian English, co-own strata lot 18 (SL18) in the respondent strata corporation, The Owners, Strata Plan LMS 1091 (strata). The strata says the Englishes breached the bylaws by unreasonably denying its contractor

access to SL18 to replace polybutylene pipes. It seeks an order for the Englishes to permit entry for this work and to reimburse the strata \$1,804.50 for costs arising from the Englishes' refusal to permit entry.

2. The Englishes say they do not oppose replacing the pipes. However, they object to the orders sought. They deny breaching the bylaws. They also say that the strata is paying for the pipe work using money provided by the City of Chilliwack (City). The Englishes say that the strata's use of the money could negatively affect their legal position with the City.
3. A strata council member represents the strata. The Englishes represent themselves. They each provided separate submissions opposing the strata.
4. For the reasons that follow, I find the strata has proven only part of its claims.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be

admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

## **ISSUES**

9. The issues in this dispute are as follows:
  - a. Must the Englishes provide the strata access to SL18 to replace the pre-existing polybutylene pipes?
  - b. Must the Englishes reimburse the strata \$1,804.50?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the strata must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision. The Englishes declined to provide any evidence. They said they would if the BC Supreme Court eventually hears this dispute.
11. As noted earlier, a title search shows the Englishes became the registered co-owners of SL18 in December 1993. It is undisputed that they reside in SL18.
12. In June 2014, the strata registered a complete set of bylaws in the Land Title Office (LTO). The strata amended the bylaws in February 2019, but I find the amendments are not relevant. Bylaws 8.1 and 8.2 allow the strata or its contractors to enter strata lots under certain conditions. As these bylaws are key to this dispute, I will discuss their wording in greater detail below.
13. I turn to the chronology. In 2019 the City expropriated a portion of the strata's land to create a road. The City discussed the expropriation in its November 25, 2019 letter

to the strata manager. The letter said it enclosed a copy of the vesting notice for the expropriated property, registered on the common property and filed in the LTO. The notice is not in evidence but given the letter, I find the City expropriated the land.

14. The strata's undisputed submission is that the City paid the owners in the strata compensation for the expropriation. It is also undisputed that the strata holds this money in its contingency reserve fund (CRF).
15. The strata held a special general meeting (SGM) on July 20, 2021. According to the minutes, the strata's construction includes polybutylene pipes. These were breaking down from old age and causing leaks. These pipes also increased the strata's cost to obtain insurance and negatively impacted its deductible. I find these facts are likely true as no evidence contradicts them.
16. The minutes go on to state that the owners voted on a special resolution to approve funding to remove and replace the polybutylene pipes in each strata lot. The owners first voted on a resolution to raise funds to replace the pipes through a special levy. The resolution did not pass. The owners then voted and approved by the necessary margin a resolution to replace the pipes using the "Expropriation Funds". I find this is clearly a reference to the money paid by the City to the strata and held in the CRF.
17. The strata provided the following undisputed submissions about what happened next. The strata manager emailed the Englishes on December 8, 2021. The strata manager asked the Englishes to provide dates for entry and pipe replacement. The Englishes did not reply by the emailed deadline of December 15, 2021. The strata's pipe installers began working on other strata lots first. I presume the strata paid for the work using the funds paid by the City.
18. The strata manager next sent the Englishes a February 2, 2022 letter. The strata requested entry under bylaw 8.1. I asked the strata to provide a copy and it sent it as evidence. The letter said the work would start on February 4, 2021. The Englishes provided comments on the letter, and I discuss these below.

19. It is undisputed that on February 4, 2021, a locksmith opened SL18's door. The Englishes were present and denied entry. The pipe replacement remains incomplete.

***Issue #1. Must the Englishes provide the strata access to SL18 to replace the pre-existing polybutylene pipes?***

20. As noted above, the bylaws allow the strata to enter strata lots under certain conditions. Bylaw 8.1(b) says that an owner must allow a person authorized by the strata to enter the strata lot at a reasonable time, on 48 hours written notice, for 2 purposes. Bylaw 8.1(b)(i) says the first purpose is to inspect, repair or maintain common property, common assets, and any portions of a strata lot that are the responsibility of the strata to repair and maintain under the bylaws or insure under section 149 of the *Strata Property Act* (SPA). Bylaw 8.1(b)(ii) says the second is to ensure compliance with the SPA and the bylaws.

21. Bylaw 8.2(1)(b) says the notice must include the date and approximate time of entry, and the reason for entry.

22. I note that not all pipes in the strata's building are necessarily common property or the strata's obligation to repair and maintain. However, the parties did not dispute that the strata must repair and maintain the pipes at issue. As stated earlier, the Englishes do not oppose replacing the polybutylene pipe. They say other jurisdictions have banned them for many years due to health concerns and problems due to failures. Further, the owners in the strata voted to replace the pipes at the July 2021 SGM. So, I accept that for the purposes of this dispute, the strata must repair and maintain the pipes at issue. I find bylaw 8.1(b)(i) applies to the SL18 pipes at issue.

23. The Englishes submit that bylaw 8.1 covers only repair and maintenance, and not replacement of the pipes. I disagree, as case law holds that repair and maintenance obligations can include replacement when necessary. See *The Owners of Strata Plan NWS 254 v. Hall*, 2016 BCSC 2363.

24. I turn now to whether the strata's February 2, 2022 letter provided sufficient notice. For the following reasons, I find it failed to provide 48 hours of written notice.

25. The Englishes say the strata sent the letter to them on February 2, 2022 at 9:41 a.m. The strata was given the opportunity to reply or contradict this submission but did not do so. So, I find this submission is accurate. The letter said it required access on February 4, 2022, at 8:00 a.m. So, I find the Englishes received slightly less than 48 full hours of notice.
26. I note that under the SPA section 61(1)(a)(ii) and section 61(1)(b), the strata is entitled to provide bylaw notices by mail or other means, such as putting it under the strata lot door. However, under SPA section 61(3), such notice is conclusively deemed given 4 days after it is put under the door or mailed. The same applies to several other delivery methods, including putting the notice through a mail slot or in the mailbox, fax, or email. The strata did not say how it delivered the notice. Based on the Englishes' submissions, I find the strata likely put the notice under SL18's door or emailed it on the letter's date of February 2, 2022. So, I find that by February 4, 2022, the notice was not yet conclusively deemed given to the Englishes under SPA section 61.
27. Given the above, I find the strata did not provide the Englishes sufficient notice. I find the Englishes did not breach the bylaws. That said, I find that returning the matter back to the strata to send another notice for entry would not resolve the parties' issue. This is because the Englishes say they wish to deny the strata access to SL18 for other reasons discussed below.
28. Under CRTA section 2, the CRT's mandate includes providing dispute resolution services in a manner that is speedy, informal, flexible, and recognizes that relationship between parties to a dispute will likely continue after a CRT proceeding is concluded. I note that the strata first tried to schedule replacing the pipes in December 2021. This conflict has therefore continued for some time. So, consistent with the CRT's mandate, I will consider whether I should order the Englishes to allow the strata access under certain terms, or if doing so would be significantly unfair to the Englishes.

29. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the court applied a “reasonable expectations” test when considering whether a discretionary action of council was significantly unfair. The test asks: What was the applicant’s expectation? Was that expectation objectively reasonable? Did the strata violate that expectation with a significantly unfair action or decision?
30. Here, I find the Englishes expected the strata to pay for the repairs from other funds. This is because they believe using the “Expropriation Funds” will negatively affect their legal position with the City. I find this expectation was objectively unreasonable for the following reasons.
31. First, under SPA section 27 strata owners may direct the strata council in its exercise of powers and performance of duties provided that direction is made by a resolution passed by a majority vote at a general meeting. As noted earlier, the owners in the strata approved the method of payment by passing a resolution at the July 2021 SGM. So, I find it was unreasonable for the Englishes to expect the strata to act contrary to the passed resolution.
32. Consistent with this, case law states that the courts, and the CRT, should not interfere with the democratic governance of a strata corporation except where absolutely necessary. See *Oldaker v. The Owners, Strata Plan VR 1008*, 2007 BCSC 669.
33. I also find the Englishes did not raise other reasonable rationales for refusing entry. The Englishes say that paying for repairs from the City’s paid funds will detrimentally affect the Englishes’ legal position with the City. They say that by spending the money, more of the strata’s land will be transferred to the City. However, the City’s letter indicates that the City has already expropriated the land and paid the strata. There is no indication that the City placed any conditions on how the money should be spent. So, I find the Englishes’ argument speculative and unsupported by any basis in fact or law.

34. The Englishes also say they wish to pay for the pipe repair themselves, then seek reimbursement from the strata after their negotiations with the City are over. The Englishes provided no evidence about these negotiations or any other evidence in this dispute. So, I find it unproven that there is anything left to negotiate. In any event, the Englishes did not file a counterclaim to seek reimbursement or an order for the parties to follow their proposed arrangement.
35. Given the above, I find it would not be significantly unfair for the Englishes to allow the strata access to SL18 after the strata provides appropriate notice. I order the Englishes to allow the strata's authorized persons access to S18 on 48 hours' written notice to complete work in connection with replacing the polybutylene pipes.

***Issue #2. Must the Englishes reimburse the strata \$1,804.50?***

36. The strata seeks compensation of \$1,804.50. It produced the following invoices: a \$672 invoice dated February 4, 2022 from a plumber, a \$525 invoice dated February 20, 2022 from a drywaller, a \$134.40 invoice dated March 1, 2022 for legal fees incurred before the CRT issued the Dispute Notice.
37. I note these invoices fall short of the claimed amount, so I find the shortfall unproven. In any event, I have already found that the strata provided insufficient notice for the work date of February 4, 2022. I find these expenses were incurred in connection with that date, so I find the Englishes are not liable for them. I dismiss these claims for reimbursement totaling \$1,804.50.

**CRT FEES AND EXPENSES**

38. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.
39. I find the strata has been partially successful as it succeeded on some claims and not others. I therefore order the Englishes to partially reimburse the strata for CRT fees of \$112.50. The parties did not claim for any specific dispute-related expenses.



40. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the Englishes.

## **ORDERS**

41. I order the Englishes to allow the strata's authorized persons access to SL18 on 48 hours' written notice to complete work in connection with replacing the polybutylene pipes.

42. I order the Englishes to pay the strata \$112.50 for partial reimbursement of CRT fees.

43. The strata is entitled to post-judgment interest under the *Court Order Interest Act*.

44. I dismiss the strata's remaining claims.

45. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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David Jiang, Tribunal Member